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In the Supreme Court of the United States

OCTOBER TERM, 1947

Nos. 352-353

UNIVERSAL OIL PRODUCTS COMPANY, PETITIONER

v.

ROOT REFINING COMPANY AND SKELLY OIL COMPANY

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 102 Misc.

UNIVERSAL OIL PRODUCTS COMPANY, PETITIONER

v.

ROOT REFINING COMPANY AND SKELLY OIL COMPANY

ON MOTION FOR LEAVE TO FILE A PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 103 Misc.

UNIVERSAL OIL PRODUCTS COMPANY, PETITIONER

v.

HONORABLE JOHN BIGGS, ET AL.

*ON MOTION FOR LEAVE TO FILE A PETITION FOR WRITS OF
PROHIBITION AND MANDAMUS*

MEMORANDUM FOR UNITED STATES AS AMICUS CURIAE

STATEMENT

The Universal Oil Products Company seeks by petition for writs of certiorari under Judicial Code 240 (a) (Nos. 352-353) and by motions for leave to file a petition for writs of certiorari (Nos. 102, Misc.) and leave to file a petition for writs of prohibition and mandamus under Judicial Code 262 (No. 103, Misc.) to review those portions of the orders of the Circuit Court of Appeals for the Third Circuit (1) directing petitioner to show cause why that court's judgments, entered on June 26, 1935, should not be set aside and vacated by reason of alleged fraud and corruption practiced upon the court by petitioner or those acting on its behalf,¹ and (2) granting the Skelly Oil Company leave to intervene (R. 174-177).² The orders also vacate the court's orders of June 15, 1944, setting aside and vacating its judgments

¹ The return day of the orders was October 13, 1947. By subsequent order, the return day has been postponed until 30 days after the disposition of these petitions and motions by this Court.

² The records filed in each case are identical both in contents and pagination. The various motions and petitions are likewise in large measure identical, although the pagination does differ. All references are to the record and petition in Nos. 352-353.

entered on June 26, 1935, and authorize the Attorney General of the United States or some member of the staff of the Department of Justice designated by him to appear as *amicus curiae*. These orders were issued by the court below in connection with proceedings subsequent to this Court's opinion and mandate in *Universal Oil Products Co. v. Root Refining Co.*, 328 U. S. 575. The pertinent facts as there summarized follow:

In 1929 and 1931, Universal Oil Products Company brought suits for patent infringement against Winkler-Koch Engineering Co. and the Root Refining Co., respectively. The suits were consolidated and the patents held valid and infringed. 6 F. Supp. 763. The Circuit Court of Appeals for the Third Circuit, in an opinion written by Judge J. Warren Davis, affirmed (78 F. 2d 991), and this Court denied certiorari, 296 U. S. 626. In 1939, Universal and Root arrived at an agreement attempting to settle their controversy.³

On June 5, 1941, the attorneys, who had represented Root and were then representing other oil companies against which petitioner had instituted similar infringement suits on the basis of the *Root* decrees, suggested to the Circuit Court of Appeals for the Third Circuit that the testimony taken at Judge Davis' trial pointed to his bribery by one Morgan S. Kaufman to obtain

³ On July 28, 1944, Universal and Root entered a further settlement agreement. (R. 170.)

decisions favorable to Universal in the *Root* appeals and urged the court to inquire further into the matter. Since Root had settled its controversy with Universal and did not wish to take any steps to reopen the proceedings and since the other oil companies insisted they were neither formal nor substantial parties to the *Root* cases, the Court in order to give these attorneys status in the proceedings appointed them *amici curiae*, although the attorneys were also concerned with the interests of their private clients.

At the suggestion of the *amici curiae*, the court appointed a master to inquire into the circumstances surrounding the *Root* decrees. The master held extensive hearings, at the conclusion of which he submitted a report concluding that the *Root* decrees were tainted and invalidated by fraud. On the basis of this report, the court below by orders dated June 15, 1944, directed the judgments be vacated and the causes reargued.

On July 24, 1944, the *amici* asked the court to assess against Universal their expenses and reasonable attorneys' fees. After an oral hearing, the court sitting *en banc*, two judges dissenting, on December 29, 1944 awarded the *amici* \$54,606.57 as expenses and \$100,000 as reasonable compensation, 147 F. 2d 259. Petitioner sought review of the order of December 29, 1944 by applying for writs of certiorari under Judicial Code 240 (a) and 262, and for leave to file petitions for mandamus and prohibition. The writs

of certiorari were granted (324 U. S. 839), but leave to file petitions for mandamus and prohibition was denied, 324 U. S. 826. After briefs were filed and argument had, this Court in its opinion concluded that the order of December 29, 1945, awarding compensation to the *amici* was invalid. It dismissed the writ of certiorari invoked under Judicial Code 262 but under the writ of certiorari issued under Judicial Code 240 (a) it reversed and remanded the cause to the court below for the entry of a judgment in conformity with the opinion. A petition for rehearing alleging ambiguity in the Court's opinion was denied on October 14, 1946. 329 U. S. 823.

By letters dated June 20, 1946, the court below, through its clerk invited the suggestions of petitioner and of *amici* as to "the present status of the appeals" in the *Root* cases, "now that the petitions for writ of certiorari have been disposed of by the Supreme Court," (R. 3). The requested suggestions were submitted (R. 5-21). On October 29, 1946, the Skelly Oil Company filed petitions for leave to intervene "to participate in any further proceedings in this Court or in the district court on the question whether there should be dismissal for fraud" (R. 23). A hearing was had before the court below, sitting *en banc*, with the exception of one judge, at which hearing petitioner, *amici curiae*, and counsel for Skelly advanced various suggestions as to the permissible further procedure to be followed. On

June 20, 1947, the court below issued the orders here involved (R. 174-177). Appearances of the former *amici curiae* were withdrawn on July 30, 1947 (R. 178-179), and the appearances of members of the staff of the Department of Justice as *amici curiae* were entered (R. 180-181).

DISCUSSION

Apart from the question of the propriety of action of the court below in permitting Skelly Oil Company to intervene, as to which the United States takes no position, the basic question raised by the various motions and petitions filed by petitioner in this case is whether in light of the decision of this Court in *Universal Oil Products Co. v. Root Refining Co.*, 328 U. S. 575, the court below properly directed petitioner to show cause why its judgments of June 26, 1935, should not be vacated by reason of alleged fraud and corruption.⁴ Petitioner has consented to the vacation of these judgments (Pet. 7-8), and has urged the court below to dismiss the appeals not for fraud but as moot on the grounds that Root is no longer interested in the proceedings and that of the two patents involved, one had expired and the other declared invalid (*Universal Oil Co. v. Globe Co.*, 322 U. S. 471). Thus, petitioner's objections are addressed not to the vacation of the judgments but

⁴ Petitioner does not question that portion of the orders authorizing the Attorney General or members of his staff to appear as *amicus*, nor could any such question be raised in the light of this Court's prior opinion.

rather to the possibility that the court below might ground the vacation on fraud or bribery and apply the doctrine of unclean hands.

Petitioner's contentions opposing such action by the court below are based on its construction of this Court's opinion in 328 U. S. 575. These contentions which are reiterated in the same language in each of petitioner's motions and petitions filed in the present proceeding are (1) the orders to show cause deviated from this Court's mandate in the prior proceeding (Pet. 30); (2) that there was no case or controversy pending before the court below when it entered its orders of June 20, 1947, and therefore, the court was without jurisdiction to proceed, except to dismiss the appeals (Pet. 26-31); and (3) that the orders to show cause deprive petitioner of property without due process of law (Pet. 31-33). We believe that petitioner has erroneously interpreted this Court's decision, and that its contentions accordingly are without merit.

1. As we read the opinion in 328 U. S., this Court was passing directly only on the order of December 29, 1944, allowing compensation to the then *amici curiae*. It was expressly stated in the opinion that the orders of June 15, 1944, setting the judgments aside for fraud were not before the Court and that the Court was not passing directly on those orders (328 U. S. at 580). The mandate was accordingly addressed only to the order of December 29, and not to the orders of June 15; noth-

ing in the mandate required the court below either to vacate the orders of June 15, or to take any further proceedings in regard thereto. Obviously then, the vacation of these orders and the undertaking of further proceedings initiated by issuance of the show cause orders did not conflict with this Court's mandate and therefore there is no occasion for this Court to grant the petition for writs of mandamus and prohibition for the purpose of compelling the court below to act in accordance with, and not in contravention of, the mandate.

2. Presumably in view of the doubts expressed by this Court as to the propriety of the hearings leading up to the orders of June 15, the court below vacated, *sua sponte*, these orders. In issuing the show cause orders the court below was initiating proceedings plainly intended to obviate any infirmities which might have vitiated the prior proceedings. The further proceedings contemplated are clearly within the jurisdiction of the court below, despite the refusal of the defendant actively to participate. At the present posture of the case, all that the court below has done is to issue the show cause orders. These orders, we believe, do not themselves contain any of the infirmities which this Court suggested in its opinion.

(a) Petitioner urges that the court below, by issuing the show cause orders has manifested an intention to determine petitioner's rights to the prior judgments notwithstanding the absence of

a "case or controversy." This, petitioner claims, is contrary to the opinion of this Court in 328 U. S. 575 and requests the issuance of common law writs of certiorari to correct such excess of jurisdiction. Cf. *U. S. Alkali Assn. v. United States*, 325 U. S. 196. But as we read this Court's opinion, there is nothing express or implied therein requiring the existence of a classical "case or controversy" with adverse plaintiff and defendant in a proceeding to set aside a judgment obtained by fraud or corruption. All that is required is that if the result of the investigation is to deprive the successful party of a judgment, he must be accorded the usual safeguards of an adversary proceeding. Petitioner confuses the safeguards of an adversary proceeding which is based on due process with the jurisdictional requirement of an adversary proceeding, stemming from a "case or controversy."

The Court's statement that "the inherent power of a federal court to investigate whether a judgment was obtained by fraud, is beyond question," (328 U. S. at 580) supported by the citation of *Hazel-Atlas Co. v. Hartford Co.*, 322 U. S. 238, indicates, we believe, the fallacy in petitioner's contention for in the *Hazel-Atlas* case, this Court pointed out (p. 246):

* * * tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in

which fraud cannot complacently be tolerated consistently with the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.

Moreover, in the prior proceeding, petitioner invoked the common law writ of certiorari on this very basis. Although that writ was initially granted (324 U. S. 839), this Court after further consideration dismissed the writ while reversing the cause under the writ of certiorari invoked under Judicial Code 240 (a). 328 U. S. at 581. This, we submit, demonstrates that the Court did not hold that the orders below contained a jurisdictional infirmity and accordingly petitioner's motion for leave to file a petition for common law writs of certiorari should be denied.

(b) Nor is there any reason to grant the writs of certiorari invoked under Judicial Code 240 (a). The mere issuance of show cause orders by the court below does not violate "the usual safeguards of adversary proceedings [which] must be observed" in such an investigation. Petitioner contends that by issuing the orders in this form, the court below has adopted the suggestion advanced below that the master's report be used as the basis of these further proceedings (Pet.

30-32). Such procedure, petitioner urges, would violate the safeguards to which it is entitled. But although this Court indicated that the orders could not properly constitute the sole basis of a finding of fraud, we see nothing in the opinion requiring the court below to disregard entirely the master's report or the record made before him and foreclosing their use as the starting point for further proceedings. In any case, the show cause orders do not indicate what procedure the court below intends to follow in according petitioner the usual safeguards of an adversary proceeding. Since the court below has merely issued show cause orders which are only interlocutory, and do not themselves violate the safeguards of adversary proceedings, and since petitioner will on a complete record have ample opportunity to raise questions of possible violation of these safeguards at the completion of such further proceedings, we suggest that there is no reason at this time to review those orders.

3. Thus, the issuance of the orders directing petitioner to show cause why the judgments of June 26, 1935 should not be set aside for fraud and corruption, contravenes neither the opinion of this Court in 328 U. S. 575, as we construe it, nor the mandate entered pursuant thereto. If, however, we have misread the opinion, we urge this Court to undertake clarification at this time by granting petitioner's motion either for leave to file petition for writs of prohibition and mandamus or for

leave to file petition for common law writs of certiorari, since it is a matter of importance in judicial administration that the scope and limitations of a court's power to vacate judgments allegedly tainted by fraud and corruption be clearly defined.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1947.